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CHARLES ELMORE C

IN THE

Supreme Court of the United States.

October Term, 1936.

No. 365

THE ASSOCIATED PRESS,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

JOHN W. DAVIS,
WILLIAM C. CANNON,
Counsel for Petitioner.

THE BALLOU PRESS NEW YORK

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IN THE

Supreme Court of the United States,

OCTOBER TERM, 1936.

THE ASSOCIATED PRESS,
Petitioner,
against
NATIONAL LABOR RELATIONS BOARD.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

The Associated Press petitions for a writ of certiorari to review a decision of the Circuit Court of Appeals for the Second Circuit, rendered July 13, 1936, in *National Labor Relations Board* v. *The Associated Press* (unreported) granting the petition of the National Labor Relations Board for enforcement of its order of May 21, 1936, requiring The Associated Press to:

"1. Cease and desist:

(a) From discouraging membership in the American Newspaper Guild or in any other labor organization of its employees, by discharging, threatening to discharge, or refusing to reinstate any of its employees for joining the Guild or any other labor organization of its employees; and

(b) From in any other manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining the Guild or any other labor organization of its employees; and

(c) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Morris Watson immediate and full reinstatement, to his former position, without prejudice to any rights and privileges previously enjoyed by him.

(b) Make whole said Morris Watson for any loss of pay he has suffered by reason of his discharge, by payment to him of a sum of money equal to that which he would normally have earned from the date of his discharge to the date of offer of reinstatement, computed at the rate of $295 per month, less the amount earned by him in that period.

(c) Post immediately notices to its employees in its New York office stating (1) that respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting." (R. 3).

The opinion of the Circuit Court of Appeals is not reported but may be found at pages 436-445 of the record.

Summary Statement of the Matter Involved.

The petitioner, The Associated Press, is a membership corporation organized and existing under the laws of the State

of New York, engaged in the purchase, collection, receipt, compilation and formulation of intelligence. The petitioner has a membership of owners of over thirteen hundred morning, evening, and Sunday newspapers to whom it distributes such news as it collects.

In its New York office the petitioner has two Departments, the Traffic Department and the News Department. Employees engaged in the physical transmission or distribution of news are in the Traffic Department; the executives and editorial employees, engaged in the collection or formulation of news, are in the News Department.

On October 18, 1935, the petitioner discharged Morris Watson, an editorial employee, engaged in obtaining, composing, writing and editing items of news.

On November 7, 1935, the American Newspaper Guild, a labor organization, filed charges with the National Labor Relations Board against The Associated Press, alleging that in discharging Watson the petitioner herein had engaged in unfair labor practices in contravention of Section 8 of the National Labor Relations Act (R. 10-11). Thereupon on December 4, 1935, a complaint was served by said Board on the petitioner herein, which alleged that in violation of Sections 8(1) and (3) of the National Labor Relations Act it had discharged and refused to reinstate said Watson (R. 12-15). The Associated Press by answer admitted the discharge of Watson but denied that the discharge was due to the fact that Watson had joined and assisted the Guild or engaged in labor activities (R. 16-21). Hearings on the complaint were held before an Examiner. The petitioner herein moved to dismiss the complaint on constitutional grounds, its motion was denied, and it withdrew. After further hearings,

the Examiner recommended reinstatement of Watson and payment of lost wages (R. 416-432). This report was confirmed by the Board and an order entered to that effect (R. 432-433). The Board then petitioned the Circuit Court of Appeals for the Second Circuit for the enforcement of this order (R. 1-4). After a hearing before that Court on June 15, 1936, at which the application of the Act to the petitioner and its constitutionality were fully argued, that Court granted the petition of the Board (R. 445). It is from this decree that petitioner applies for a writ of certiorari.

B.

Reasons Relied on for the Allowance of the Writ.

I. The permissible applicability of the National Labor Relations Act and its constitutionality are important questions of Federal law, which have not been, but which should be, settled by this Court.

Many cases involving the constitutionality of this Act, brought both by the Labor Relations Board for enforcement of its orders and by various employers to restrain the Board from taking action under the Act, are now pending in all parts of the United States.

II. This decision by the Circuit Court of Appeals for the Second Circuit we believe to be in conflict with decisions of other Federal Courts, in cases involving the applicability and the constitutionality of this Act:

1) *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, (C. C. A. 5, decided June 15, 1936 as yet

unreported) in which the court held 1) that the Board had no jurisdiction over a labor dispute between employers and employees touching the discharge of laborers in a steel plant who were engaged only in manufacture, and 2) that the effect on interstate commerce of such a dispute was not sufficiently direct to bring it within the regulatory power of the Federal Government, although the employer imported part of his raw materials and exported a large part of his product in interstate commerce.

2) *Fruehauf Trailer Co.* v. *National Labor Relations Board* (C. C. A. 6, decided June 30, 1936 as yet unreported) in which a similar result was reached with regard to a labor dispute affecting laborers engaged in the production and manufacture of trailers, although raw materials were shipped in and the finished product shipped out of the state in which manufacture took place.

3) *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co. Inc.* (C. C. A. 2nd, decided July 13, as yet unreported) in which the court held that, though practically all respondents raw materials were brought in from other states and 83% of his manufactured product was shipped in interstate commerce, yet the Federal Government could not regulate the dealings of employer with employee engaged in the manufacture of the product.

4) *Stout et al.* v. *Pratt, et al.* (D. Mo. 1936) 12 F. Supp. 864. A Missouri mill sought injunctive relief against prosecution under this Act by the Labor Relations Board. The mill received wheat from Kansas and shipped flour to Iowa. The court in denying defendants motion to dismiss the bill and in granting plaintiffs a temporary injunction held that the relation of employer and employee whether in mill, mine, factory or store did not so directly affect interstate commerce as to permit Federal regulation of the relationship.

5) *Bendix Products Corp.* v. *Beman et al.* 14 F. Supp. 58 (N. D. Ill. 1936). Plaintiff, a manufacturer of carburetors, brakes and other automotive and aircraft parts and accessories, was granted injunctive relief against action by the Labor Board under the Act on the ground that the Act deprived the employer of freedom of contract and consequently was a denial of due process.

6) ***El Paso Electric Co.*** v. ***Elliott et al.*** 15 F. Supp. 81 (W. D. Tex. 1936). The court granted an injunction against the Labor Board's proceeding under the Act on the ground that the Act was unconstitutional as applied to the plaintiff, an electric company producing energy in New Mexico for sale in Texas.

7) *Bethlehem Shipbuilding Corporation Ltd.* v. *Myers et al.* (D. Mass. decided July 22, 1936, as yet unreported). The plaintiff was granted injunctive relief against threatened proceedings under the Act by the defendants on the ground that the Act as applied to the plaintiff was not within the Federal power over commerce.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 466, National Labor Relations Board, Petitioner, against The Associated Press, Respondent, and that said decree of the Circuit Court of Appeals for the Second Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Court may seem meet and just; and your petitioner will ever pray.

Dated: New York, N. Y., September 14, 1936.

THE ASSOCIATED PRESS,
By JOHN W. DAVIS,
WILLIAM C. CANNON,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinion Below.

The opinion of the Circuit Court of Appeals for the Second Circuit has not been reported but may be found in the record at pages 436-445.

Jurisdiction.

The decree of the Circuit Court of Appeals for the Second Circuit now sought to be reviewed was entered July 20, 1936 (R. 445).

The statutory provision which is believed to sustain the jurisdiction of this Court is Section 240 (a) of the Judicial Code, as amended by the Act of Congress of February 13, 1925, c. 229 s. 1; 43 stat. 938 (U. S. C. A. Title 28, §347(a)).

Statute Involved.

The nature of this case and the decision of the Circuit Court of Appeals is such as to bring same within the terms of the statutory provisions aforesaid, in that the validity of a statute of the United States, to wit, the National Labor Relations Act, Act of Congress July 5, 1935, Pub. No. 198, 74th Congress, 49 Stat. 10, U. S. C. A. Title 29, Section 151 *et seq.*, was assailed as unconstitutional.

Statement.

The principal facts have already been summarized in the petition, *supra*, pages 2 to 4.

Specification of Errors to Be Urged.

1. The Circuit Court of Appeals erred in holding that the National Labor Relations Act is a valid exercise of the power of Congress to regulate interstate commerce.

2. The Circuit Court of Appeals erred in holding that the relationship between The Associated Press as employer and Morris Watson as one of its editorial employees so directly affected interstate commerce as to be subject to Federal regulation.

3. The Circuit Court of Appeals erred in holding that the National Labor Relations Act does not contravene the Fifth Amendment to the Constitution of the United States.

4. The Circuit Court of Appeals erred in holding that the National Labor Relations Act does not contravene the First Amendment to the Constitution of the United States.

5. The Circuit Court of Appeals erred in holding that the National Labor Relations Act does not contravene the Seventh Amendment to the Constitution of the United States.

6. The Circuit Court of Appeals erred in holding that the National Labor Relations Act does not contravene the Tenth Amendment to the Constitution of the United States.

ARGUMENT.

POINT I.

The relation of employer with employee does not directly affect commerce and is therefore not subject to regulation by Congress.

a) The employer-employee relationship, whether in production, in the current of commerce or on the very instrumentalities of commerce, is a purely local one which does not directly affect interstate commerce and therefore is not susceptible of Federal regulation.

That the relation of employer and employee in industry is not subject to Federal regulation under the Commerce Clause was decided by this Court in *Schechter Corp.* v. *United States*, 295 U. S. 495, with regard to hours and wages, and in *Carter* v. *Carter Coal Co.*, 297 U. S. (80 L. Ed. 749) with regard to hours, wages and collective bargaining.

Nor does the fact that the relationship exists on the very instrumentalities of interstate commerce subject it to Federal regulation.

In *Adair* v. *United States*, 208 U. S. 161, the Court considered the Erdmann Act of 1898 which made it a crime for an interstate carrier to discharge an employee merely because of his membership in a labor organization. Mr. Justice McKenna in his dissent, in language which might well be used to describe the present Labor Relations Act, said (p. 184):

> "The provisions of the act are explicit and present a well coordinated plan for the settlement of disputes between carriers and their employes, by bringing the dis-

> putes to arbitration and accommodation, and thereby prevent strikes and the public disorder and derangement of business that may be consequent upon them."

Yet the Court held (p. 178):

> "But *what possible legal or logical connection is there between an employe's membership in a labor organization and the carrying on of interstate commerce?* Such relation to a labor organization cannot have, *in itself* and in the eye of the law, any bearing upon the commerce with which the employe is connected by his labor and services. Labor associations, we assume, are organized for the general purpose of improving or bettering the conditions and conserving the interests of its members as wage-earners—an object entirely legitimate and to be commended rather than condemned. But surely those associations as labor organizations have nothing to do with interstate commerce as such." *

This decision has to the best of our knowledge never been overruled. *Pennsylvania Railroad Co.* v. *Labor Board*, 261 U. S. 72, and *Pennsylvania R. R. System, etc.* v. *Pennsylvania R. R. Co.*, 267 U. S. 203 in no way detract from its authority. Both cases arose under the Transportation Act of 1920. By that Act the only action which could be taken by the Board in case of violation of its decision of a dispute was to make public its decision. In the first case, the Court without passing on the constitutionality of the Act held that it would not enjoin the Board from acting.

In the latter case (267 U. S. 203) a union sought to enjoin the railroad from ignoring the ruling of the Labor Board. In refusing the injunction the Court, after quoting from its decision in the last cited case, said (p. 215):

> "It is clear from this language that in the *Labor Board Case* this Court has decided that there is nothing

* Italics ours unless otherwise noted.

> compulsory in the provisions of the statute as against either the Company or the employees upon the basis of which either acquired additional rights against the other which can be enforced in a court of law."

Obviously the decision of these cases is not authority in support of the present Act which sets up not moral rights and obligations, but legal rights and obligations enforceable not by public opinion but with all the power of the courts.

In *Wilson* v. *New*, 243 U. S. 332, the Court upheld the Adamson Act, which fixed the hours and wages of employees of interstate carriers in the face of a threatened general strike, as a necessary measure to prevent a complete interruption of interstate commerce and as "essential to protect the public right and safeguard the movement of interstate commerce". Thus, the Act was an emergency measure, upheld by reason of extraordinary circumstances under which the employer-employee relations threatened to operate directly upon the very instrumentalities of commerce.

Five years later in *Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522, the Court explained and distinguished its decision in the *Wilson* case in the following language (p. 544):

> "It is not too much to say that the ruling in *Wilson* v. *New* went to the border line, although it concerned an interstate common carrier in the presence of a nation-wide emergency and the possibility of great disaster."

As the Court said in *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 369:

> "The legislation considered in *Wilson* v. *New* was drafted to meet a particular exigency and its validity depended upon circumstances so unusual that this court's decision respecting it cannot be considered a precedent here."

Nor does *Texas & New Orleans Railroad Company et al.* v. *Brotherhood of Railway & Steamship Clerks et al.*, 281 U. S. 548, in any way overrule the decision in the *Adair* case. The *Texas* case arose under the Railroad Labor Act of 1926. By that Act it was provided that representatives for the purpose of arbitration were to be selected by the respective parties "without interference, influence or coercion exercised by either party over the self-organization or designation of representatives by the other". It appears that the railroad opposed the demands of a regularly organized union, promoted another organization which would be more favorable to it and discharged leading representatives of the original organization. The union sought to enjoin the railroad from interfering with their employees with respect to their right to select representatives. The decision of the lower courts granting the injunction was upheld. The Court held that the Act did not compel the carrier to deal with the union, or to employ union members, and that the only compulsion put upon the carriers by the Act was to refrain from interfering with the designation of representatives by the employees. The *Adair* case was distinguished on the ground that (p. 571):

> "The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees *or to discharge them*. The statute is not aimed at this right of the employers but at the interference with the right of employees to have representatives of their own choosing. As the carriers subject to the Act have no constitutional right to interfere with the freedom of the employees in making their selections, they cannot complain of the statute on constitutional grounds."

True, despite the specific statement of the Court contained in the above quotation, that the Act in no way interfered with the right of the carrier to discharge its employees, the decree which was affirmed required the reinstatement of the discharged union men. But that requirement was inserted not because the Court felt that the carrier had acted illegally in discharging these men, but as a means of purging the road of the contempt of which it was guilty in disobeying the District Court's injunction.

The present Act goes far beyond that of 1926 which was considered in the above case. In that Act the Court specifically noted that resort to arbitration with the duly elected representatives of labor was not required, nor, as has been indicated, was the employer denied the right to discharge an employee, even though the reason for the discharge might be, that the employee was actively engaged in organizing his fellows.

POINT II.

The work done by Watson and by the petitioner's other editorial employees was not in interstate commerce or in a "throat" of such commerce.

Even if the Court had held that Congress could deny to employers on interstate railroads the right to hire and fire, such a decision would not be authority for the imposition of a like denial upon the petitioner. As already indicated the Associated Press is not an instrumentality of interstate commerce; its only contact with commerce between the states is that it receives news and sends it out over the wires of the regular communications companies to its members.

The Board contended (R. 13) and the Circuit Court held, (R. 443-4) that the work done by the editorial employees of the petitioner was in a "throat" of interstate commerce, and that therefore the petitioner's relations with those employees was subject to Federal regulation.

Whether or not The Associated Press, as a whole, may be said to be engaged in interstate commerce, the record establishes beyond question that the editorial employees whose relations are here involved are engaged only in that part of the business of The Associated Press which is intrastate in character and analogous to local manufacturing or processing.

The nature and extent of this editorial work, outside of any stream of commerce, is abundantly and repeatedly shown in the record (R. 32-34, 66-67, 69, 93-95, 101-102, 117-118, 119-124, 186, 191, 214, 225, 421-423). Aside from the collection of news, by going out on "stories" or "assignments", the editorial employees are engaged in examining incoming news, rewriting it, selecting and discarding, balancing it to make up proportioned news reports according to the special needs of the respective localities and newspapers to which the reports are to be sent. We submit that it is unjustifiable to characterise such work as a mere rerouting of incoming news into outgoing channels. There is a distinct break at the New York office in the continuity of the flow of news.

This Court has held that the mere fact that the material manufactured or processed has been shipped in from another state and is going to be shipped out to a third state does not necessarily convert the business of manufacturing or processing into interstate commerce. *Arkadelphia Co.* v. *St. Louis S. W. Ry. Co.*, 249 U. S. 134.

We contend that the activities of the editorial employees of The Associated Press are in no wise different from those

performed by employees engaged in the manufacture from materials procured from other states of articles which in their finished form are to be shipped out of the state of manufacture (see *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co. Inc. (supra)* and *National Labor Relations Board* v. *Jones & Laughlin Steel Co. (supra)*).

POINT III.

The National Labor Relations Act violates the Fifth Amendment and is void, because it does not seek legitimate ends, and its terms are arbitrary, unreasonable and capricious.

Section 1 of the Act states that its purpose is "to diminish the causes of labor disputes." This is to be done "by restoring equality of bargaining power between employer and employees." To this end the Act provides (Section 9) that an employer may deal *only* with those representatives "designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes." The Board is to decide what constitutes an appropriate unit. Likewise an employer may not (Section 8(3)) discharge an employee or discriminate in regard to hire or tenure of employment of an employee, if the Board considers that the discharge or the discrimination was caused by a desire to encourage or discourage membership in any labor organization. It was under this last section that these proceedings against the petitioner herein were instituted.

Freedom of contract between employer and employee, the right to private bargaining, is the rule under the Fifth Amendment and restraint the exception.

As this Court said in *Morehead* v. *Tipaldo*, 297 U. S. (decided June 1, 1936):

> *"The right to make contracts about one's affairs is a part of the liberty protected by the due process clause.* Within this liberty are provisions of contracts between employer and employee fixing the wages to be paid. In making contracts of employment, generally speaking, *the parties have equal right to obtain from each other the best terms they can by private bargaining.* Legislative abridgement of that freedom can only be justified by the existence of *exceptional circumstances. Freedom of contract is the general rule and restraint the exception."*

To the same effect see:

Adair v. *U. S.*, 208 U. S. 161;
Allgeyer v. *Louisiana*, 165 U. S. 578;
Butchers' Union Slaughter-house Co. v. *Live-stock Co.*, 111 U. S. 746;
Adkins v. *Children's Hospital*, 261 U. S. 525; which was cited and followed in
Murphy v. *Sardell*, 269 U. S. 530;
Coppage v. *Kansas*, 236 U. S. 1;
Wolff Packing Co. v. *Court of Industrial Relations*, 262 U. S. 522;
Ribnik v. *McBride*, 277 U. S. 350.

The National Labor Relations Act is not confined to the exigencies of any emergency*, to the relief of any extraordinary distress§, to the removal of any unusual danger** or fraudulent or unfair practice†, it is intended as a permanent piece of legislation and must be judged as such.

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* Compare *Wilson* v. *New*, *supra*; *Block* v. *Hirsh*, 256 U. S. 135 and similar cases.

§ *Nebbia* v. *New York*, 291 U. S. 502; *Bunting* v. *Oregon*, 243 U. S. 426; *Muller* v. *Oregon*, 208 U. S. 412.

** *Holden* v. *Hardy*, 169 U. S. 366.

† *Knoxville Iron Co.* v. *Harbison*, 183 U. S. 13; *McLean* v. *Arkansas*, 211 U. S. 539; *Schmidinger* v. *Chicago*, 226 U. S. 578; *Peterson Baking Co.* v. *Bryan*, 290 U. S. 570; *Armour & Co.* v. *North Dakota*, 240 U. S. 510; *Hall* v. *Geiger-Jones Co.*, 242 U. S. 539, and similar cases.

It is an attempt utterly to destroy the freedom of individual employers and employees to bargain with each other *equally and individually* in regard to their own private relations and private occupations. Such a wholesale restraint on freedom of contract is without legal precedent and not permissible under the due process clause of the Fifth Amendment.

Assuming for the sake of argument, however, that the Act seeks legitimate ends, the means adopted are arbitrary and unreasonable.

The Act usurps and interferes with the management of the employer's own property and business by dictating to him how he shall deal with his workers, and by putting it within the power of the Labor Board to require him to employ those whom he may not want or trust or whom he may consider incompetent.

The Act requires that the representatives of the majority of the employees in an "appropriate unit" shall be the *exclusive* representatives of all the employees. Thus the minority is not only deprived of the power to contract with their employer, but they are also in effect bound by the terms of any agreement which he makes with the representatives of the majority.

As to the unreasonableness of such a requirement this Court said in *Carter* v. *Carter Coal Company, supra:*

> "The power (to fix hours and wages) conferred upon the majority (of producers and of miners) is, in effect, the power to regulate the affairs of an unwilling minority. This is legislative delegation in its most obnoxious form; for it is not even delegation to an official or an official body, presumptively disinterested, but to private persons whose interests may be and often are adverse to the interests of others in the same business.
>
> * * * * * * * * *

> "And a statute which attempts to confer such power undertakes an intolerable and unconstitutional interference with personal liberty and private property. The delegation is so clearly arbitrary, and so clearly a denial of rights safeguarded by the due process clause of the Fifth Amendment, that it is unnecessary to do more than refer to decisions of this court which foreclose the question. Schechter Corp. v. United States, 295 U. S. at p. 537; Eubank v. Richmond, 226 U. S. 137, 143; Seattle Trust Co. v. Roberge, 278 U. S. 116, 121-122."

But this Act goes even beyond the Guffey Coal Act in that it does not set out what employees shall be included in determining the unit to be polled. The decision is left to the Board as to what unit is the appropriate one for collective bargaining. The only restriction upon the power of the Board in the selection of a unit is that such selection be made "in order to insure to employees the full benefit of their right to self-organisation and to collective bargaining and otherwise to effectuate the policies of this Act".

As the court said in considering this Act in *Bendix Products Corporation* v. *L. W. Beman* (N. D. Ill. 1936), 14 F. Supp. 58, 66;

> "Implicit in the power to determine the unit appropriate for the purposes of collective bargining is the power to gerrymander, and thereby to aggrandize or crush a labor organisation."

POINT IV.

The National Labor Relations Act contravenes the First Amendment.

The First Amendment guarantees to citizens of the United States freedom of speech and freedom of the press. This freedom is seriously jeopardised by the provisions of the Labor Relations Act. As has already been indicated

Labor Relations Board may in certain circumstances require an employer to reinstate an employee. The Associated Press claims the right to discharge any employee, whenever it feels that his viewpoint has become so colored that he is unable to write the unbiased type of news article with which it attempts to provide its members. If the validity of the Act is upheld the Board will be able to force The Associated Press to employ men, even though it feels such men cannot write accurate and impartial reports; and The Associated Press, if it is to continue in business, will have to send these reports out as its own. Its freedom to present the news it wants to as it wants to will be seriously hampered if not destroyed.

CONCLUSION.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the novel and important questions of Federal law present in this cause may be decided by this Court, and that to such an end a writ of certiorari should be granted, and this Court should review the decision of the Circuit Court of Appeals for the Second Circuit and finally reverse it.

JOHN W. DAVIS,
WILLIAM C. CANNON,
Counsel for Petitioner.